

**EMPLOYMENT LAW**

## Protected By The Constitution

*Human rights are the basic rights a person is born with. It is the general values of society that have been protected in the Bill of Rights contained in the Constitution of the Republic of South Africa ("Constitution"). Learn about equality, privacy, freedom of expression and other human rights by reading this QuickLaw guide.*

**For all your Constitution questions and answers, simply follow our guide below:**

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### **1. Human rights: you are protected by the Constitution**

- Human rights are the basic rights a person is born with. It is the general values of society that have been protected in the Bill of Rights contained in the Constitution of the Republic of South Africa ("Constitution").
- The importance of the Bill of Rights lies in South Africa's past where these values were not respected equally or extended to every person. For example, not everyone was allowed to vote at a national election.

- Even though a person has all these human rights, it is important to keep in mind that it may be limited in certain instances.

## **2. Equality**

- Every person has the right to be treated equally and to receive equal protection of the law.
- The right to equality includes not to be discriminated against, directly or indirectly, based on race, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- For example, recent case law held that a same-sex couple may not be refused entry into a restaurant on the grounds of their sexual orientation.

## **3. Privacy**

- Every person has a right to privacy. This generally means that a person and his/her property (like a house or motor vehicle) cannot be searched, possessions cannot be taken, or communications cannot be infringed (like private letters or conversations).
- More recently, the law is being developed to improve protection of a person's personal information (such as social media accounts, contact details, financial details, addresses, and so on). The right to privacy will address this issue when the Protection of Personal Information Act ("POPI") comes into effect.

## **4. Human dignity**

- Every person has the right to have his/her dignity respected and protected.
- A person's dignity refers to self-respect and his/her value and worth as a human. The right to dignity includes, for example, not to be humiliated, insulted or treated with disrespect.

## **5. Freedom of expression**

- Every person is free to express him/herself and is not just limited to freedom of speech, but also refers to the expression of an emotion or belief. For example, wearing certain items of clothing, dancing, painting and so on.
- However, even though a person has the right to freedom of expression, the rights of other persons must be taken into account. By exercising the right to freedom of expression, a person may say something that humiliates another and violates that person's right to human dignity.

## **6. Religious freedom**

- The right to religious freedom includes the right to have a belief in something (such as a deity) and to express it publicly (such as to go to church).
- This right is not just limited to religion, but also includes freedom of conscience, thought and opinion. For example, a person has the right to believe what s/he wants and to apply his/her own moral thoughts when giving an opinion on something.
- A religious belief can usually be protected by law if such a belief is sincerely held by a person, for example, a person can hold a religious belief despite the beliefs being different to others or incapable of scientific proof.

## **7. Arrested persons**

- A person who has been arrested for allegedly committing a criminal offence (“accused”) has the right to remain silent and to be assumed innocent until the State can prove that s/he is guilty.
- The accused also has the right to legal representation (such as an attorney) and to appear in court within 48 hours after being arrested, weekends and public holidays excluded.

## **8. Labour relations**

- Every person has the right to fair labour practices. This means that an employer must treat employees fairly, for example, an employer must follow a fair procedure in respect of a promotion.
- An employee also has the right to join a union and to strike.

## **9. Children**

- The best interests of a child is the most important factor in any matter that concerns a child. For example, whether it will be in the best interests of a child to reside with his/her mother or father after they get divorced.
- Other important rights include that every child has the right to:
  - basic nutrition, shelter and basic health care services and social service; and
  - be protected from maltreatment, neglect and abuse.

## **10. How can LegalWise assist you?**

Should you require an explanation of this topic, please contact your nearest [LegalWise Branch](#), call, e-mail or WhatsApp us. For more information about our membership options visit our [legal services](#) page or visit our [join now](#) page.

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